IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 148 of 2007

(Old No. 827 of 1983)

Chief Food Inspector, Local Health Authority,
Nainital.

…….Applicant.

Versus

Sri Jagtar Singh, S/o Sri Succha Singh,
R/o Village Chandeli Bangali,
P.S. Khatima, District Nainital.

……Opposite Party.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 378 of Code of Criminal Procedure, 1973, is directed against the judgment and order dated 29.01.1983, passed by Special Judicial Magistrate, Nainital in Criminal Case No. 7 of 1982,

whereby accused / respondent Jagtar Singh has been acquitted of the charge of offence punishable under Section 7/16 of Prevention of Food Adulteration Act, 1954.

(2) Heard Sri H.C. Pujari, learned A.G.A. for the appellant and Sri Sanjeev Kumar Sah, learned amicus curiae for the respondent.

(3) Brief facts of the case are that appellant-Chief Food Inspector, Nainital, on 30.01.1981 at about 12.15 hours (noon), near Banwari Lal go-down in Khatima, found accused / respondent Jagtar Singh selling mixed milk of cow and she-buffalo. Apprehending that the milk might be adulterated one, the Chief Food Inspector with intention to purchase milk for the purpose of analysis, served a notice in form VI (copy of Ext. A-1) on the accused / respondent Jagtar Singh and purchased 750 grams of milk for Rs.1.70 Paisa and obtained a receipt from him. After purchasing the milk, the Chief Food Inspector Sri Hamid Hasan divided the milk in three equal parts and filled the same in three clear, dry and empty phials. He mixed 20 drops of Formaline in each of the phials. All the three phials were sealed and label were affixed over it with code number issued from the Chief Medical Officer / Local Health Authority. On each of the sample thumb impression of the accused / respondent Jagtar Singh were got affixed. The complainant (The Chief Food Inspector) sent one phial for analysis to Public Analyst, U.P., Lucknow, along with Form VII (copy Ext. A-4), and deposited the remaining two phials with the Chief Medical

Officer, Nainital. After analysis, report of the Public Analyst (Ext. A-5) was received with the report that the sample was found having 16% less fatty solids and 13% less non-fatty solids.

(4) As such, since the milk purchased was found adulterated by public analyst, the Chief Food Officer after obtaining necessary sanction (Ext. A-7) from the Local Health Authority, submitted a complaint to the Magistrate for trial of the accused for committing offence punishable under Section 7/16 of Prevention of Food Adulteration Act, 1954 read with Rule 50 of the Rules framed under the said Act. The Accused / respondent Jagtar Singh was summoned on the complaint by the Magistrate after recording the statement of P.W. 1 Hamid Hasan charge of offence punishable under Section 7/16 of Prevention of Food Adulteration Act, 1954 read with Rule 50 of the Rules made under the said Act, was framed on 14.07.1982. The accused pleaded not guilty and claimed to be tried. The accused did not prefer to get the sample examined from the Central Food Laboratory. Thereafter, the Chief Food Inspector was further cross-examined under Section 246 of Cr.P.C.. Whereafter P.W. 2 C.D. Bhatt, Food Clerk in the Court of Chief Medical Officer was got examined, who proved the sanction for prosecution awarded by the Local Health Authority. The prosecution evidence was put to the accused under Section 313 of Cr.P.C., in which the accused alleged the evidence adduced by prosecution witnesses as false. In defence D.W. 1 Katha Singh was got examined, who told the Court that

Jagtar Singh is an agriculturist and does not do business of selling milk. The Magistrate after hearing the parties, found the charge of offence punishable under Section 7/16 Prevention of Food Adulteration Act, not proved and accordingly acquitted the accused (present respondent) from said charge with certain adverse observation against the Chief Food Inspector. Hence this appeal was filed by Chief Food Inspector before Allahabad High Court on 06.04.1983. Leave to appeal was granted by the Allahabad High Court and appeal was admitted on that very day i.e. 06.04.1983. This appeal is received by transfer to this Court under Section 35 of U.P. Reorganization Act, 2000, for its disposal.

(5) Having heard learned Additional Government Advocate for the appellant and Sri Sanjeev Kumar Sah, amicus curiae for the respondent, and after going through the trial court's record, this Court finds that the main ground, for acquitting the accused, recorded by the trial court, is that the statement of P.W. 1 Hamid Hasan is not supported by any witnesses of fact before whom sample was taken from accused / respondent Jagtar Singh. The lone other witness P.W. 2 C.D. Bhatt is not a witness of fact and has proved only sanction granted by Local Health Authority (CMO) to prosecute accused-Jagtar Singh.

(6) In this connection, it is pertinent to mention here the provisions contained in sub-section (7) of Section 10 of Prevention of Food Adulteration Act 1954, which read as under:-

"(7) Where the food inspector takes any action under clause (a) of sub-section (1), sub-section (2), sub-section (4), or sub-section (6), he shall, call one or more persons to be present at the time when such action is taken ant take his or their signatures."

(7) The sample is taken by the Food Inspector under clause (a) of sub-section (1) of Section 10 of Prevention of Food Adulteration Act, 1954. Hence, it was mandatory for the Food Inspector to get witnesses taking of sample by one or more persons. As far as compliance of the aforesaid sub-section (7) of Section 10 is concerned, it appears that the same is made, as is clear from copy of Form No. VI (Ext.A-1), which bears signatures of witnesses, Suresh Chandra Sharma and Tika Ram. However, the only mistake committed by the complainant / prosecution is that none of the witnesses, who witnesses taking of the sample, were got examined by the prosecution. This created doubt in the mind of trial court as to the truthfulness of prosecution story in the light of the fact that the accused had denied that the milk was purchased from him and also that D.W. 1 Katha Singh has stated that Jagtar Singh (accused / respondent) does not do the business of selling milk. In the circumstances, as far as the conclusion taken by the trial court that the prosecution story, as alleged by the complainant, does not stand proved beyond reasonable doubt, is concerned, the same cannot be said to be unfounded. And this Court is of the view that the acquittal of accused / respondent recorded by the trial court

cannot be said to be erroneous in law. However, the adverse observations made against the Chief Food Inspector by the Magistrate in its impugned judgment are totally uncalled for. The Magistrate without any sufficient reason made observations against the Chief Food Inspector in the impugned judgment, while acquitting the accused Jagtar Singh.

(8) For the reasons as discussed above, this Court is of the view that the appeal against the acquittal is liable to be dismissed, but the observations made by the Magistrate against the Chief Food Inspector are liable to be expunged. Accordingly, the appeal is dismissed, but the observations made by Special Judicial Magistrate, Nainital, against Chief Food Inspector, in his judgment and order dated 29.01.1983, in Criminal Case No. 7 of 1982 are expunged.

(Prafulla C. Pant, J.)

Dt. 24.8.2007
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